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LIM GUAN ENG v. MAHIADDIN MD YASSIN

HIGH COURT MALAYA, KUALA LUMPUR
ROZ MAWAR ROZAIN JC
[CIVIL SUIT NO: WA-23CY-8-03-2023]
8 NOVEMBER 2024

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Abstract – *Freedom of expression must be exercised responsibly, particularly by those who hold or have held high public office. The making of unsubstantiated allegations that play on racial and religious sensitivities cannot be countenanced by the court. In this case where defences of justification, fair comment and qualified privilege have not been successfully established, the quantum of damages awarded must reflect both the gravity of the defamation and its potential impact on society. It serves not only to compensate the plaintiff but also to vindicate his reputation and to mark the court's disapproval of the conduct displayed.*

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TORT: *Defamation – Press statements – Whether intermixed with references to race and religion – Whether statements referred to plaintiff – Whether defamatory of plaintiff – Whether there were publications of statements – Whether pleaded defences of justification, fair comment and qualified privilege established – Whether plaintiff ought to be granted damages and remedies*

E

TORT: *Defamation – Defences – Justification – Whether defamatory statements true – Whether defendant had resources at his disposal to verify and confirm allegations – Whether language used inflammatory – Whether defence of justification ought to fail*

F

TORT: *Defamation – Defences – Fair comment – Nature of statements – Whether statements presented as statements of fact, not opinion – Absence of true factual base – Whether statements lacked true factual foundation – Failure to verify allegations – Whether defendant created or invested facts and then purported to comment upon them – Whether defence of fair comment sustainable*

G

TORT: *Defamation – Defences – Qualified privilege – Whether defendant has interest or duty to make statements – Whether defendant did not attempt to verify allegations – Whether defendant intentionally mixed allegations with inflammatory religious and racial overtones – Whether malice inferred – Whether defence of qualified privilege ought to fail*

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This action for defamation involved two prominent political figures: the plaintiff, YB Lim Guan Eng, former Finance Minister of Malaysia, and the defendant, Tan Sri Mahiaddin Md Yassin, former Prime Minister of Malaysia. At its core, this case concerned three statements made by the defendant over a span of four days in March 2023, alleging that the plaintiff had cancelled or refused to recognise tax exemptions previously granted to

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Yayasan Al-Bukhary during his tenure as Finance Minister. The allegations, intermixed with references to race and religion, sparked considerable public interest and media coverage. On 9 March 2023, the defendant was summoned to the Malaysian Anti-Corruption Commission ('MACC') headquarters in Putrajaya for questioning related to alleged abuse of power and corruption, during his tenure as the Prime Minister. After being released that evening, the defendant published a press statement on his Facebook account ('first statement') that the plaintiff had cancelled previously approved tax exemptions granted to Yayasan Al-Bukhary which carried out Islamic charitable works. On 11 March 2023, the defendant published a second press statement ('second statement') on his Facebook account, stating, among others, the plaintiff's responsibility for imposing taxes and penalties on an Islamic charitable organisation. On 12 March 2023, during a press interview, the defendant made further statements that the plaintiff had 'stopped' the work of 'the biggest Malay led Yayasan' ('third statement'). The plaintiff contended that these three statements were defamatory and filed this suit seeking damages and other reliefs. The issues that arose for this court's determination were: (i) whether the three statements complained of were defamatory of the plaintiff; (ii) whether the statements referred to the plaintiff; (iii) whether there were publications of the statements; (iv) if the statements were found to be defamatory, whether the defendant had established any of his pleaded defences of: (a) justification; (b) fair comment; and (c) qualified privilege; and (v) if the defences failed, what remedies should be granted to the plaintiff.

Held (granting general, aggravated and exemplary damages to plaintiff; ordering retraction of all three defamatory statements from defendant's social media accounts):

(1) The statements clearly imputed improper motives and conduct to the plaintiff in his capacity as Minister of Finance. Each of the three statements would tend to lower the plaintiff in the estimation of right-thinking members of society generally. The first statement directly accused the plaintiff of cancelling previously approved tax exemptions. When read with the introductory reference of Yayasan Al-Bukhary conducting Islamic charitable works, it carried a clear innuendo that the plaintiff was acting against Islamic interests. The first statement when read carried the imputations of the plaintiff as a vindictive person who as the Finance Minister, had acted in bad faith. The second statement reinforced this by emphasising the plaintiff's responsibility for imposing taxes and penalties on an Islamic charitable organisation. To the reasonable reader, the second statement placed the blameworthiness on the plaintiff whereby the allegation demeaned the plaintiff in the eyes of the reasonable reader particularly the suggestion of the plaintiff being racist, incompetent and unethical whilst abusing his position as the

A Finance Minister to take such action. The third statement was perhaps the most damaging, explicitly stating that the plaintiff 'stopped' the work of 'the biggest Malays led Yayasan' suggesting improper racial and religious motivations. It was a direct attack on the plaintiff that accused him of lifting the tax exemption. The reasonable reader would view the
B plaintiff in a more negative light than before. (paras 18-22)

(2) An ordinary reasonable reader would understand these statements as alleging the plaintiff abused his power as Finance Minister to deliberately target and harm an Islamic charitable organisation. This would clearly tend to expose him to hatred, contempt or ridicule,
C particularly given Malaysia's multi-racial and multi-religious context. It would demean the plaintiff as a man who helmed the high office of Finance Minister, as one who had no integrity, was vindictive and was prepared to abuse his position of power. The defamatory meaning was compounded by the fact that the defendant was a former Prime Minister
D making these allegations. His statements would carry particular weight and credibility with the public to an extent. (paras 23 & 24)

(3) As to whether the statements refer to the plaintiff, this element was clearly established and indeed not disputed by the defendant. The statements explicitly named 'Lim Guan Eng' which was the plaintiff and
E referred to his position as Minister of Finance. Publication of all three statements respectively was also clearly established. The statements were posted on the defendant's Facebook account which was not denied by the defendant. His Facebook account had a large following. Furthermore, the statements were picked up and republished by various
F media outlets, including the Edge Markets, Sinar Harian, Malaysiakini and Berita Harian, giving them even wider circulation. (paras 25-27)

(4) There was conclusively established evidence by DW2 that no letter was issued by the plaintiff or Ministry of Finance cancelling or refusing to recognise Yayasan Al-Bukhary's tax exemptions. The letter from Tan
G Sri Syed Mokhtar to the defendant dated 5 February 2021 which the defendant relied on actually undermined his case. The letter complained about IRB not recognising tax exemptions 'baru-baru ini' which connoted a recent period of time – which in the context clearly referred to the period when the defendant himself was Prime Minister, not
H during the plaintiff's tenure as Finance Minister. Apart from the said letter, there were no other documents to prove that the plaintiff was responsible for revoking or refusing to recognise the tax exemptions. The defendant had full knowledge of the said letter from Tan Sri Syed Mokhtar and had resources at his disposal to verify and confirm whether
I his understanding was correct on the facts, yet he did not do so and continued to make further defamatory statements against the plaintiff. The context of the defamatory statements were, in their natural and

ordinary meaning, provoked and incited racial sentiments. There was no justification for the making of such defamatory statements. The defendant had failed to prove the truth of his allegations and his defence of justification must fail. (paras 30-33)

(5) A careful examination of the three statements revealed they were presented as statements of fact, not comment or opinion. The first statement explicitly states 'inilah faktanya' before alleging the plaintiff 'telah membatalkan pengecualian.' This was clearly presented as a statement of fact, not opinion. The second statement definitively asserted the plaintiff 'bertanggungjawab terhadap keputusan untuk mengenakan semula cukai' and again, this was presented as fact rather than comment. The third statement contained declarative statements about what 'obviously' happened, rather than qualified opinions or comments. Even if these could be considered comments, the defence of fair comment would still fail because they lacked true factual foundation. The fundamental premise upon which the defendant had claimed to have based his 'comments' – that the plaintiff cancelled or refused to recognise the tax exemptions – was demonstrably false. Further, the defendant had made no attempt to verify his allegations and had deliberately mixed his allegations with inflammatory references to race and religion. The defendant had failed to identify at least in general terms the underlying facts which were true. Instead, the defendant had created or invested facts and then purported to comment upon them. The defendant's defamatory statements were found to have gone beyond any legitimate comment and by contrast made serious allegations of misconduct against the plaintiff without any factual basis. The defence of fair comment was not sustainable. (paras 38-39)

(6) On a balance of probabilities, there was malice on the part of the defendant. The defendant had access to Ministry records through his position but made no effort to verify his allegations and chose to make these allegations at a time when he knew public attention was focused on his MACC investigation.The media focus on him and the possibility of criminal charges against him was deflected by suggesting the plaintiff's role in the cancellation of the tax exemption status of Yayasan Al-Bukhary. He had deliberately framed his allegations in racial and religious terms and had them escalated rather than having his allegations retracted when challenged. The defendant had the benefit of being open to correction when the plaintiff requested publicly that the prior statements be retracted, and also the opportunity of verifying the truth and accuracy of his statements. Malice on the part of the defendant may be inferred if he had purposely abstained from inquiring into facts or

A from availing himself of means of information which lay at hand. The defence of qualified privilege pleaded by the defendant therefore failed. (paras 40-51)

(7) The plaintiff was a credible and reliable witness. His testimony was consistent throughout and remained unshaken under cross-examination. B Most significantly, the plaintiff's evidence that he never issued any directive to cancel or not recognise Yayasan Al-Bukhary's tax exemption status was corroborated by the defendant's own witness, DW2, from the Ministry of Finance. Having found the three statements were defamatory and that the defences failed, on a balance of C probabilities, the plaintiff had successfully proven its case against the defendant. (paras 52-55)

(8) As for the remedies sought by the plaintiff, it would be remiss of this court to not take into account the position of the defendant who was the Prime Minister from February 2020 to August 2021. The three D defamatory statements that he made against the plaintiff, to a reasonable reader, would have been taken as the truth. The plaintiff was also a senior politician who, at one point in time, was helming our Ministry of Finance during the significant time when there was changing of the guards on the political front. This was an appropriate case to grant E general, aggravated and exemplary damages. General damages were awarded to compensate the plaintiff for damage to his reputation and vindicate his good name. Given the serious nature of the allegations and the plaintiff's high public standing, substantial damages were warranted. (paras 62 & 63)

F **(9)** The quantum of damages awarded reflected both the gravity of the defamation and its potential impact on our society. It serves not only to compensate the plaintiff but also to vindicate his reputation and to mark the court's disapproval of the conduct displayed. Freedom of expression, while fundamental to our democracy, must be exercised G responsibly, particularly by those who hold or have held high public office. The making of unsubstantiated allegations that play on racial and religious sensitivities could not be countenanced by this court. (paras 66 & 67)

Case(s) referred to:

H *Abdul Rahman Talib v. Seenivasagam & Anor [1964] CLJU 2; [1964] 1 LNS 2 HC* ***(refd)***

Ayob Saud v. TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC ***(refd)***

Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 CA ***(refd)***

Dato' Dr Low Bin Tick v. Datuk Chong Tho Chin & Other Appeals [2017] 8 CLJ 369 FC ***(dist)***

I *Dato' Seri Mohammad Nizar Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor [2014] 3 CLJ 560 CA* ***(refd)***

Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Mohd Rafizi Ramli [2022] 5 CLJ 487 FC ***(refd)***
Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Nurul Izzah Anwar & Anor [2021] 4 CLJ 327 FC ***(refd)***
JB Jeyaretnam v. Goh Chok Tong [1984] CLJU 139; [1984] 1 LNS 139 ***(refd)***
Jones v. Skelton [1963] 3 All ER 952 ***(refd)***
Joshua Benjamin Jeyaretnam v. Goh Chok Tong [1989] CLJU 34; [1989] 1 LNS 34 ***(refd)***
Lim Guan Eng v. New Straits Times Press (M) Bhd [2017] 4 CLJ 369 HC ***(refd)***
Lim Guan Eng v. Ruslan Kassim & Another Appeal [2021] 4 CLJ 155 FC ***(refd)***
MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals [1995] 2 CLJ 912 CA ***(refd)***
S Pakianathan v. Jenni Ibrahim & Another Case [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233 SC ***(refd)***
Tun Datuk Patinggi Hj Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors [1995] CLJU 304; [1995] 1 LNS 304 HC ***(refd)***
Utusan Melayu (Malaysia) Bhd & Ors v. Tjanting Handicraft Sdn Bhd & Anor [2005] 1 CLJ 71 CA ***(refd)***

Legislation referred to:
Defamation Act 1957, ss. 3, 8, 9
Rules of Court 2012, O. 45

For the plaintiff - Guok Ngek Seong, Phyllia Lim Xin Yee & Ng Choon Kiat; M/s Guok Partnership
For the defendant - Chetan Jethwani & Shu Ivy; M/s Chetan Jethwani & Company

Reported by Suhainah Wahiduddin

JUDGMENT

Roz Mawar Rozain JC:

[1] "Good name in man and woman, dear my lord, is the immediate jewel of their souls." These immortal words from Shakespeare's *Othello* were cited in the plaintiff's submissions and they resonate deeply in this case, where a man's reputation – that fragile yet precious possession – has been put to trial.

[2] This action for defamation brings into sharp focus the delicate balance between freedom of expression and the right to protect one's reputation. It involves two prominent political figures: the plaintiff, YB Lim Guan Eng, former Finance Minister of Malaysia, and the defendant, Tan Sri Mahiaddin bin Md Yassin, former Prime Minister of Malaysia.

[3] At its core, this case concerns three statements made by the defendant over a span of four days in March 2023, alleging that the plaintiff had cancelled or refused to recognise tax exemptions previously granted to Yayasan Al-Bukhary during his tenure as Finance Minister. The allegations, intermixed with references to race and religion, sparked considerable public interest and media coverage.

[4] After a full trial spanning three days from 15 July 2024 to 17 July 2024, and having carefully considered the evidence and submissions of both parties, this court finds in favour of the plaintiff. The grounds illustrating the reasoned decision are iterated below.

The Parties

[5] The respective positions and offices held by both parties are crucial to understand the gravity and context of this defamation action. The plaintiff's progression from Member of Parliament to Chief Minister of Penang and ultimately to Minister of Finance demonstrates his significant standing in public life and the weight his reputation carries. The political party of the plaintiff is the Democratic Action Party (DAP). Similarly, the defendant's position as former Prime Minister of Malaysia and current Chairman of Perikatan Nasional not only underscores his prominence but also the credibility and impact his statements would carry with the public. When a former Prime Minister makes allegations against a former Finance Minister, such statements naturally command attention and belief from the general public. The high offices held by both parties therefore amplify both the reach and the potential damage of any defamatory statements, while simultaneously raising legitimate public interest in their conduct and interactions. This context is essential for assessing both the defamatory nature of the statements and the quantum of damages that may be appropriate.

[6] The plaintiff is a prominent politician who has held several important public offices including:

(i) Member of Parliament for Kota Melaka (1986-1998);

(ii) Member of Parliament for Bagan, Penang (2008-present);

(iii) Member of Penang State Legislative Assembly for Air Putih (2008-present);

(iv) Chief Minister of Penang (March 2008-May 2018);

(v) Minister of Finance (May 2018-February 2020);

[7] The defendant is also a senior politician who has served as:

(i) Member of Parliament for Pagoh;

(ii) Prime Minister of Malaysia (March 2020-August 2021);

(iii) Chairman of Perikatan Nasional.

Background Facts

[8] The sequence of events leading to this suit can be summarised and it all started on 9 March 2023 when the defendant was summoned to the Malaysian Anti-Corruption Commission (MACC) headquarters in Putrajaya

for questioning related to alleged abuse of power and corruption during his tenure as the Prime Minister. After being released that evening, at approximately 10.12pm, the defendant published a press statement on his Facebook account (the first statement).

[9] In the first statement, while explaining matters relating to the MACC investigation when he was called in by the MACC, the defendant made allegations about the plaintiff and Yayasan Al-Bukhary, specifically stating:

> Saya datang pagi tadi untuk membolehkan SPRM merakam percakapan tambahan saya. Saya hadir tanpa paksaan untuk membantu siasatan ...
>
> 4.3 Inilah faktanya:
>
> (a) Yayasan Al-Bukhary menjalankan kerja-kerja amal dan Kebajikan khususnya membangunkan Islam dan membantu umat Islam
>
> (b) Atas semua itu, Yayasan ini diberikan kelulusan pengecualian cukai oleh kerajaan BN sebelum ini.
>
> (c) Selepas PRU 14, kerajaan gabungan PH tertubuh. Menteri Kewangan dari DAP Lim Guan Eng telah membatalkan pengecualian yang telah pun diluluskan kepada Yayasan Al-Bukhary.
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> (d) Semasa saya menjadi PM, Tan Sri Syed Mokhtar telah membuat rayuan atas pembatalan tersebut. Saya telah meminitkan – "Sila teliti rayuan ini. Sekiranya teratur, saya tiada bantahan.

[10] On 11 March 2023, the defendant published a second press statement (the second statement) on his Facebook account, stating among other things:

> Saya menerima surat rayuan daripada Yayasan Al-Bukhary semasa saya menjadi Perdana Menteri. Saya dimaklumkan bahawa pihak Yayasan telah menerima pengecualian cukai untuk kerja-kerja amal Islam. Pengecualian cukai tersebut diberikan di bawah s. 127(3A) Akta Cukai Pendapatan 1967.
>
> Selepas Pakatan Harapan mengambil alih kuasa pada bulan Mei 2018. Lembaga Hasil Dalam Negeri enggan melaksanakan pengecualian cukai yang telah diberikan sebelum ini dengan mengenakan semula cukai beserta 45% cukai penalti terhadap Yayasan Al-Bukhary.
>
> Lim Guan Eng merupakan Menteri Kewangan yang bertanggungjawab ke atas LHDN pada masa itu. Oleh itu, beliau bertanggungjawab terhadap keputusan untuk mengenakan semula cukai dan cukai penalti 45 peratus ke atas Yayasan Al-Bukhary yang merupakan sebuah pertubuhan yang melakukan kerja-kerja amal Islam.

[11] On 12 March 2023, during a press interview, the defendant made further statements (the third statement) including:

> When comes to Pakatan Harapan, Guan Eng was the Minister of Finance. Lembaga Hasil was under Ministry of Finance. So it was informed by Yayasan Al-Bukhary that they were rejected. They were cancelled. Obviously the cancellation would have gone to the Minister,

A Lim Guan Eng ...

If Guan Eng says no he did not do anything, the approval must be retained, so there was no necessity for Tan Sri Syed Mokhtar to come and see me and to ask to consider. He has to explain ...

B I know why he did that. Because he was afraid that was cancelled during his time and Yayasan Al-Bukhary is among the biggest Malays led Yayasan that has contributed a lot of things to many people. And then you stopped it. This is not good ...

[12] The plaintiff contends these three statements are defamatory and filed this suit seeking damages and other relief.

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Issues For Determination

[13] The following issues arise for this court's determination:

(i) whether the three statements complained of are defamatory of the plaintiff;

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(ii) whether the statements referred to the plaintiff;

(iii) whether there were publications of the statements;

(iv) if the statements are found to be defamatory, whether the defendant has established any of his pleaded defences of:

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(a) justification;

(b) fair comment;

(c) qualified privilege;

F (v) if the defences fail, what remedies should be granted to the plaintiff.

The Law On Defamation

[14] The elements required to establish defamation were set out by the High Court in *Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321; [1988] 1 MLRH 653; [1989] 1 MLJ 315, where Justice Mohamed Dzaiddin J (as he then was) held at p. 324:

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In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show (1) the words are defamatory; (2) the words refer to the plaintiff, and (3) the words were published.

H **[15]** On what constitutes defamatory meaning, this court is guided by the Court of Appeal's decision in *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461; [1999] 1 MLJ 371; [1999] 1 AMR 753; [1998] 2 MLRA 287, where Gopal Sri Ram JCA held at p. 467 (CLJ); p. 374 (MLJ):

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In my judgment, the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory.

[16] The test to be applied was explained by Lord Morris in *Jones v. Skelton* [1963] 3 All ER 952:

> The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see *Lewis v. Daily Telegraph Ltd* [1963] 2 All ER 151). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.

(See also *JB Jeyaretnam v. Goh Chok Tong* [1984] CLJU 139; [1984] 1 LNS 139; [1985] 1 MLJ 334; [1986] 1 MLRA 595, *Tun Datuk Patinggi Hj Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors* [1995] CLJU 304; [1995] 1 LNS 304; [1996] 1 MLJ 393; [1995] 4 MLRH 877).

Analysis Of Evidence And Findings

Are The Statements Defamatory?

[17] The plaintiff contended that the three statements, in their natural and ordinary meaning, meant and were understood to mean that:

(i) the plaintiff had abused his position and power by authorising and/or instructing the Inland Revenue Board to impose tax and penalties on a welfare foundation when such foundation is not liable to be taxed.

(ii) the plaintiff was racist, anti-Malays and anti-Islam by intentionally targeting Yayasan Al-Bukhary.

(iii) the plaintiff was intentionally sabotaging or injuring Yayasan Al-Bukhary which was involved in various Islamic charity works.

(iv) the plaintiff had committed criminal offense of abuse of power.

(v) the plaintiff was a vindictive person who acted in bad faith.

(vi) the plaintiff was an incompetent Minister.

(vii) the plaintiff was an unethical politician prone to abusing power.

[18] Looking at each of the three statements objectively, this court finds each of the three statements would tend to lower the plaintiff in the estimation of right-thinking members of society generally. The statements clearly imputed improper motives and conduct to the plaintiff in his capacity as Minister of Finance.

[19] The first statement directly accuses the plaintiff of cancelling previously approved tax exemptions. When read with the introductory reference of Yayasan Al-Bukhary conducting Islamic charitable works, it carries a clear innuendo that the plaintiff was acting against Islamic interests. This court accepts the plaintiff's submissions that a reasonable reader can easily conclude that it was the plaintiff from DAP who had caused such revocation when he helmed the position of the Minister of Finance during the Pakatan Harapan Government from 2018 to 2020. Even though, the defendant mentioned that there was a Coalition Government but the plaintiff's party was highlighted.

[20] Additionally, that the plaintiff had abused his position of power and/or position to cancel or revoke the tax exemption status of Yayasan Al-Bukhary with the intention of targeting an institution that had been helping the Malays and Muslim society. The first statement when read carried the imputations of the plaintiff a vindictive person who, as the Finance Minister, had acted in bad faith.

[21] The second statement reinforced this by emphasising the plaintiff's responsibility for imposing taxes and penalties on an Islamic charitable organisation. The foundation and its mission were again highlighted in the same breath as the accusation that it was the plaintiff who had revoked the tax exemption status. To the reasonable reader, the second statement placed the blameworthiness on the plaintiff whereby the allegation demeans the plaintiff in the eyes of the reasonable reader particularly the suggestion of the plaintiff being racist, incompetent, and unethical whilst abusing his position as the Finance Minister to take such action.

[22] The third statement is perhaps the most damaging, explicitly stating that the plaintiff "stopped" the work of "the biggest Malays led Yayasan", suggesting improper racial and religious motivations. It was a direct attack on the plaintiff that accused him of lifting the tax exemption that the defendant ended with his opinion on the negativity of the plaintiff's alleged action. The third statement was in the context that the defendant had refused to retract his earlier statements (the first and second statements) regarding the plaintiff. The reasonable reader would view the plaintiff in a more negative light than before.

[23] This court finds that an ordinary reasonable reader would understand these statements as alleging the plaintiff abused his power as Finance Minister to deliberately target and harm an Islamic charitable organisation. This would clearly tend to expose him to hatred, contempt or ridicule, particularly given Malaysia's multi-racial and multi-religious context. It would demean the plaintiff as a man who helmed the high office of Finance Minister as one who had no integrity, was vindictive, and was prepared to abuse his position of power.

[24] The defamatory meaning is compounded by the fact that the defendant was a former Prime Minister making these allegations. His statements would carry particular weight and credibility with the public to an extent.

Do The Statements Refer To The Plaintiff?

[25] This element is clearly established and indeed not disputed by the defendant. The statements explicitly named "Lim Guan Eng", which is the plaintiff and referred to his position as Minister of Finance.

Were There Publications?

[26] Publication of all three statements respectively is also clearly established. The statements were posted on the defendant's Facebook account, which were not denied by the defendant. His Facebook account has a large following, another fact that he did not deny. PW1 and PW2 gave evidence about the extensive reach of these posts.

[27] Furthermore, the statements were picked up and republished by various media outlets including The Edge Markets, Sinar Harian, Malaysiakini, and Berita Harian, giving them even wider circulation.

Defence Of Justification

[28] One of the defences pleaded by the defendant is that of justification. The law under s. 8 of the Defamation Act 1957 (the Act) provides that in a libel case, where multiple accusations are made against someone, the person being sued (the defendant) can still successfully argue that what they said was justified even if they cannot prove every single accusation. This is allowed as long as the unproven accusations do not significantly harm the plaintiff's reputation compared to the accusations that are proven true. Essentially, the unproven parts must not add much extra damage beyond what has already been proven true.

[29] The burden lies on the defendant to prove the truth of his allegations. As held by the Court of Appeal in *Dato' Seri Mohammad Nizar Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor* [2014] 3 CLJ 560; [2014] 4 MLJ 242; [2014] 3 MLRA 92 at pp. 573 and 574 (CLJ); p. 252 (MLJ):

> Again, perhaps we should go back to what in essence is required to be established by a defendant who is desirous of putting up a defence of justification in facing up a defamation suit. In relying on the defence of justification the burden of proof is on the defendant to prove that the allegations made are true or are substantially true.
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> The defendant must prove it on the balance of probabilities, that is, the allegation is more likely than not to be true. For example, an allegation published by repeating a rumour cannot be justified by providing that there was such a rumour. A defendant is required to prove the substance of the allegation. Since the burden of proving the truth of an allegation

A is on the defendant, claimants enjoy a distinct advantage in defamation claims. Justification has to be used with great care. It can often be difficult to obtain sufficient admissible evidence to persuade the judge that the statement is true. This will sometimes result in the media being unable to publish allegations which are generally believed to be true, but which they may not be able to prove to the standard required in court. Further, B an unsuccessful defence of justification is likely to increase the level of any damages awarded.

But once the defence is successfully proved it affords a complete defence against a defamation suit by a claimant. It is not necessary for a defendant to show that there was a public interest in the publication and it does not C matter whether he or she acted maliciously. The law recognises that to be the case because the defendant has established the truth of what he had stated however defamatory it has been against the plaintiff. As an illustration, if A were to accuse B of being a bankrupt, which is *ipso facto* a statement capable of being deemed defamatory, A will nevertheless be exonerated if he can successfully prove that B was indeed a bankrupt at D the time the defamatory statement was made by A.

[30] In this case, the defendant's defence of justification fails for several reasons:

(i) DW2's evidence conclusively established that no letter was issued by E the plaintiff or Ministry of Finance cancelling or refusing to recognise Yayasan Al-Bukhary's tax exemptions;

(ii) the letter from Tan Sri Syed Mokhtar to the defendant dated 5 February 2021, which the defendant relied on, actually undermines his case. The letter complains about IRB not recognising tax exemptions "baru-baru F ini" which connotes a recent period of time – which in the context clearly referred to the period when the defendant himself was Prime Minister, not during the plaintiff's tenure as Finance Minister;

(iii) the defendant admitted under cross-examination that apart from Tan Sri Syed Mokhtar's letter, he had no other documents to prove the plaintiff G was responsible for revoking or refusing to recognise the tax exemptions;

(iv) the defendant did not adduce any evidence that he had verified the alleged facts with Tan Sri Syed Mokhtar or more importantly the plaintiff before he published the three statements;

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(v) the Prime Minister confirmed in Parliament that the Finance Ministry records showed the plaintiff had never cancelled any tax exemption approval previously given to Yayasan Al-Bukhary;

(vi) this was further confirmed by the Ministry of Finance's press statement I dated 23 March 2023;

(vii) the defendant's contention that he had understood the said letter from Tan Sri Syed Mokhtar to have meant that it was the plaintiff as the Finance Minister who had cancelled the tax exemption status was completely wrong as the letter did not suggest the same.

[31] This court found that the defendant had full knowledge of the said letter from Tan Sri Syed Mokhtar. He also had resources at his disposal to verify and confirm whether his understanding was correct on the facts. Yet, he did not do so and continued to make further defamatory statements against the plaintiff after the latter had brought to his attention the falsity of such allegations in the defamatory statement(s).

[32] Learned counsel for the defendant submitted that the language used in the defamatory statements was not inflammatory. This court is unable to accept such submissions as the context of the defamatory statements were in their natural and ordinary meaning provoked incitement of racial sentiments. Furthermore, now with the evidence adduced at trial, there were no justification to have made such defamatory statements.

[33] The authorities cited by the defendant were referred to – *Carter-Ruck on Libel and Privacy*, 6th edn, Lexis-Nexis, *Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Nurul Izzah Anwar & Anor* [2021] 4 CLJ 327; [2021] 2 MLJ 577; [2021] 2 MLRA 626, there is not even a half-truth of any of the defamatory statements made and published by the defendant. This court finds that the defendant has failed to prove the truth of his allegations. His defence of justification must fail.

Defence Of Fair Comment

[34] The defendant had also pleaded a defence of fair comment. The law under s. 9 of the Act was referred to that in a defamation case (whether libel or slander) where the statement includes both facts and opinions, the defendant can still argue that his opinion was fair, even if he cannot prove that every fact he mentioned is true. As long as the opinion is reasonable based on the facts that are proven to be true, the defence of fair comment can hold up. In other words, for the defendant's opinion to be protected, the three statements only needed to be based on facts that are shown to be true.

[35] The Privy Council in deciding an appeal with regard to a successful defence of fair comment held at p. 1 of its decision in *Joshua Benjamin Jeyaretnam v. Goh Chok Tong* [1989] CLJU 34; [1989] 1 LNS 34; [1989] 3 MLJ 1; [1989] 1 MLRA 500, the following elements must be established:

(i) The words complained of are comments, although they may consist or include inferences of facts;

(ii) The comment is on a matter of public interest;

(iii) The comment is based on facts;

(iv) The comment is one which a fair-minded person can honestly make on the facts proved.

[36] Our Federal Court had endorsed those elements in *Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Mohd Rafizi Ramli* [2022] 5 CLJ 487; [2022] 3 MLJ 758; [2022] 4 MLRA 718. It iterated at p. 515 the main reason for allowing the defence of fair comment; which is to support people's right to freely share their opinions on topics that matter to the public. This defence exists because it seen as important for everyone to be able to voice their honest views about issues that affect society:

> The point that I want to make can now be concluded as follows. The breadth of the defence of fair comment only revolves around comments or inferences honestly made based on certain existing substratum of facts that are truly stated. What is required is that the comment has to identify, at least in general terms, the matters on which it is based. This, in my view, the respondent had made out to admit the defence of fair comment. After all, that is what defence of fair comment is, as opposed to the defence of justification. The primary reasoning for the creation of defence of fair comment is the desirability that a person should be entitled to express his view freely about a matter of public interest.

[37] The guidance provided by the Federal Court spelled out how the defence of fair comment is to be applied. For the defence of fair comment to be a complete shield from the defamation suit, the defendant did not need to list all the facts on which he based his opinion. This is different from the defence of justification, which requires every statement or substantially thereof to be true. However, the key facts behind the opinion must be real and true. The defendant cannot just claim to have based it on his belief or assumption. At p. 511, it ruled:

> This essentially means, to constitute a sufficient substratum of fact it is not required that all the facts on which the respondent's comments or inferences were based on should be stated in order to admit the defence of fair comment. This makes sense as the defence of fair comment may be contrasted with the defence of justification that requires every defamatory allegations made are true or are substantially true (see *Dato Seri Mohammad Nizar Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor* [2014] 3 CLJ 560; CA ("*Dato Seri Mohammad Nizar*"), *Syarikat Bekalan Selangor Sdn Bhd v. Tony Pua Kiam Wee* [2015] 8 CLJ 477; [2015] 6 AMR 66; FC and *Dato Seri Dr Mohammad Saleh Ismail & Anor v. Nurul Izzah Anwar & Anor* [2021] 4 CLJ 327; [2021] 2 MLJ 577; FC). However, the substratum of facts relied upon by the Respondent in making his comments must be true and existing. It is what *Joshua Benjamin* (*supra*) stated, that "a writer may not suggest or invent facts and then, on the assumption that they are true". In other words, a plea of fair comment is not available to the respondent if the respondent invented or created the facts he intended to rely.

[38] Applying these principles to the present case, this court finds the defence of fair comment fails for several compelling reasons:

First Ground: Nature Of The Statements

(i) the defendant argued that his three statements were merely comments or opinions based on the letter he received from Yayasan Al-Bukhary. However, a careful examination of the three statements reveals they were presented as statements of fact, not comment or opinion.

(ii) the first statement explicitly states "Inilah faktanya" before alleging the plaintiff "telah membatalkan pengecualian". This is clearly presented as a statement of fact, not opinion.

(iii) the second statement definitively asserts the plaintiff "bertanggungjawab terhadap keputusan untuk mengenakan semula cukai." Again, this is presented as fact rather than comment.

(iv) the third statement contains declarative statements about what "obviously" happened, rather than qualified opinions or comments.

Second Ground: Absence Of True Factual Base

(v) even if these could be considered comments, the defence would still fail because they lacked true factual foundation. As established in *Gatley on Libel and Slander* (11th edn) at p. 350:

> If the facts upon which the comment purports to be made do not exist, the defence of fair comment must fail. Comment based on matter of opinion only, which may or may not be true, equally affords no defence.

(vi) here, the evidence conclusively shows that:

(a) the Ministry of Finance records contain no documentation of any cancellation or non-recognition of Yayasan Al-Bukhary's tax exemptions during the plaintiff's tenure (per DW2's testimony);

(b) the letter from Tan Sri Syed Mokhtar dated 5 February 2021 complained about recent ("baru-baru ini") non-recognition of tax exemptions – referred to events during the defendant's own tenure as Prime Minister;

(c) the Ministry of Finance's press statement dated 23 March 2023 confirmed no cancellation occurred during the plaintiff's tenure;

(d) the Prime Minister's statement in Parliament verified these facts.

(vii) therefore, the fundamental premise upon which the defendant had claimed to have based his "comments" – that the plaintiff cancelled or refused to recognise the tax exemptions – is demonstrably false.

A Third Ground: Not Fair Comments

(viii) even if there were a factual basis, these were not comments that a fair-minded person could honestly make. Several factors support this conclusion:

B (a) the defendant made no attempt to verify his allegations despite having the means to do so;

(b) he deliberately mixed his allegations with inflammatory references to race and religion by emphasising Yayasan Al-Bukhary's role in "membangunkan Islam dan membantu umat
C Islam";

(c) the timing of the statements – immediately after his MACC questioning – suggests they were calculated to deflect attention rather than make honest comment;

D (d) he persisted with and amplified his allegations in the second and third statements even after the plaintiff's denial.

(ix) the defendant failed to identify at least in general terms the underlying facts which were true. Instead, the defendant had created or invested facts and then purported to comment upon them. The defendant's
E defamatory statements are found to have gone beyond any legitimate comment and by contrast made serious allegations of misconduct against the plaintiff without any factual basis.

[39] Premised on the evidence before this court, the defence of fair comment is not sustainable.

F *Defence Of Qualified Privilege*

[40] The evidence revealed that on a balance of probabilities, there was malice on the part of the defendant. The following evidence strongly suggests malice:

G (i) the defendant had access to Ministry records through his position but made no effort to verify his allegations;

(ii) he chose to make these allegations at a time when he knew public attention was focused on his MACC investigation;

H (iii) the media focus on him and the possibility of criminal charges against him was deflected by suggesting the plaintiff's role in the cancelling of the tax exemption status of Yayasan Al-Bukhary;

(iv) he deliberately framed his allegations in racial and religious terms;

I (v) he escalated rather than retracted his allegations when challenged.

[41] For qualified privilege to succeed, the occasion must be one where the person making the communication has an interest or duty to make it and the person receiving it has a corresponding interest or duty to receive it. The Federal Court in *Dato' Dr Low Bin Tick v. Datuk Chong Tho Chin & Other Appeals* [2017] 8 CLJ 369; [2017] 5 MLRA 361; [2017] 5 AMR 629 held that qualified privilege depends on the occasion upon which the communication was made, not the communication itself – at p. 387:

> Qualified privilege depends on the occasion upon which the communication is made, not the communication itself. A qualified privilege occasion is an occasion where the person who makes a communication has an interest or a duty, legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. If the communication were made in pursuance of a duty or on a matter in which there was a common interest in the party making and the party receiving it, the occasion is said to be one of qualified privilege, whether an occasion is a privileged occasion depends on the circumstances of each case, the nature of the information and the relation of speaker and recipient. It is for the judge alone to determine as a matter of law whether the occasion is privileged (*Adam v. Ward* [1917] AC 309; [1916-17] All ER Rep 157).

[42] The facts in that case are distinguishable. The defendant did not make those statements to queries posed in his investigation with the MACC or any other authority but to the public. They were not made in pursuance of duty. In fact, the first statement was made right after he had left MACC for investigations, alluding that the first statement was one of the subject matters being looked into by the authorities. It was in the form of a press statement.

[43] The second statement was another press statement published on the defendant's Facebook page. That was in reply to the plaintiff's press statement urging the defendant to retract the first statement. The circumstances which they were made did not amount to qualified privilege.

[44] The third statement was made by the defendant during his press interview three days after the first statement. The defendant had the benefit of being open to correction when the plaintiff requested publicly that the prior statements be retracted, and also the opportunity of verifying the truth and accuracy of his statements. The circumstances here were not qualified privilege.

[45] In any event, qualified privilege can be defeated by proof of malice. The Federal Court ruled at p. 390:

> The *prima facie* defence of qualified privilege is not available if it is shown that a defendant has been actuated by actual or express malice, or if he has used the occasion for some indirect or wrong motive. In *Royal Aquarium & Summer and Winter Garden Society v. Parkinson* [1892] 1 QB 431 Lopes IJ said:

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> Not only must the occasion create the privilege, but the occasion must be made use of *bona fide*, and without malice. The defendant is only entitled to the protection of the privilege if he uses the occasion in accordance with the purpose for which the occasion arose. He is not entitled to the protection of the privilege if he uses the occasion for some indirect or wrong motive.

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[46] In examining the malice in that case, the Federal Court held that the mere act of filing the numerous complaints with various relevant authorities, all with sufficient mandate from the association, without more, was not enough to prove malice. Back to the case at hand, the following evidence was established:

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(i) the defendant made no attempt to verify his allegations with either the plaintiff or Ministry of Finance before publication;

(ii) he intentionally mixed his allegations with inflammatory religious and racial overtones by repeatedly emphasising Yayasan Al-Bukhary's

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Islamic charitable work;

(iii) the timing of the statements – immediately after his MACC questioning – suggests an improper motive to deflect attention from his own legal troubles;

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(iv) he continued making the allegations in his second and third statements even after the plaintiff had denied them.

[47] Whether the evidence amounted to malice, this court takes reference from the case of *Abdul Rahman Talib v. Seenivasagam & Anor* [1964] CLJU 2; [1964] 1 LNS 2; [1965] 1 MLJ 142; [1964] 1 MLRH 296. The High Court

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in its appellate jurisdiction held at pp. 156 to 157 that in a defamation case involving qualified privilege, the defence can be overturned if the plaintiff shows "express malice" meaning the defendant had a wrong or indirect motive beyond just the words used. Malice can appear in how the statement is made, like if the language is too harsh, or through outside evidence

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showing the defendant acted out of spite or with some hidden agenda. Importantly, actual malice is not just personal hostility; it includes any use of a privileged situation for an improper purpose unrelated to duty or the reason for the privilege.

[48] The High Court ruled that malice can be shown with evidence outside

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the statement itself, like if the defendant held grudges or had disputes with the plaintiff, made threats, or had an indirect reason to harm the plaintiff. Any sign that suggests a negative motive at the time of publication of the defamatory statements can support a finding of malice if it aligns more with malice than honesty. However, every example of malice must be

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individually examined. If the evidence is inconclusive or ambiguous, it does not count as proof of malice. Still, malice might also be inferred directly from the statement itself if the language is overly aggressive and seems out of place given the situation, as this might suggest a malicious intent.

[49] In that case, the High Court found it "remarkable that he did not make inquiries ..." (at p. 157 of the judgment), and drew the only reasonable inference that the first defendant's desire to make a political capital outweighed his sense of caution. It was concluded that his defamatory statements were actuated by malice.

[50] Applying that legal principle, this court is of the considered view that malice on the part of the defendant may be inferred if he had purposely abstained from inquiring into facts or from availing himself of means of information which lay at hand.

[51] The defence of qualified privilege pleaded by the defendant therefore fails. See also the Supreme Court's decision in *S Pakianathan v. Jenni Ibrahim & Another Case* [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233; [1988] 2 MLJ 173; [1988] 1 MLRA 110 and Court of Appeal's decision in *Utusan Melayu (Malaysia) Bhd & Ors v. Tjanting Handicraft Sdn Bhd & Anor* [2005] 1 CLJ 71; [2005] 2 MLJ 397; [2004] 2 MLRA 519.

Credibility Of Witnesses

[52] This court heard and appreciated the testimonies of the witnesses at trial. The plaintiff called three witnesses while the defendant called two witnesses. Having observed their demeanour and assessed their evidence, this court finds the plaintiff a credible and reliable witness. His testimony was consistent throughout and remained unshaken under cross-examination. He gave his evidence in a clear, straightforward manner without evasion.

[53] Most significantly, the plaintiff's evidence that he never issued any directive to cancel or not recognise Yayasan Al-Bukhary's tax exemption status was corroborated by the defendant's own witness, DW2 who was En Hazlan Abdul Aziz from the Ministry of Finance. DW2 confirmed under cross-examination that he had examined the Finance Ministry's records and found no letter issued by the plaintiff or the Ministry revoking or refusing to recognise tax exemptions given to Yayasan Al-Bukhary.

[54] This admission by DW2 seriously undermines the defendant's case and lends strong support to the plaintiff's position.

Conclusion

[55] Having found the three statements were defamatory and that the defences failed, this court found on a balance of probabilities that the plaintiff has successfully proven its case against the defendant.

Remedies

[56] The plaintiff prayed for an apology in all the newspapers in the country and a retraction of all three defamatory statements. The plaintiff also prayed for general damages, aggravated damages, and punitive damages, all to be assessed by this court. It was submitted that a figure of RM1,500,000

(RM500,000 for each defamatory statement) is most appropriate. The plaintiff had also prayed for an injunction restraining the defendant, whether by himself or his employees, servants, and agents from re-issuing and re-publishing the three defamatory statements or anything similar.

[57] It was submitted by the plaintiff that the country deserves a statesman who makes responsible statements to unify the nation, not to incite disharmony and divide the nation as the defendant had done here. The publication on the social media platform also meant that the three defamatory statements were read and could still be read beyond borders. It had attracted large coverage from various media/press. The plaintiff further submitted on the inappropriate conduct of the defendant whereby the three defamatory statements were issued in a short span – 9 March 2023 to 12 March 2023, which contained racial and religious slurs against the plaintiff. It was pressed upon this court by the plaintiff that as a former Prime Minister, his conduct was unwarranted and irresponsible as he did not even bother to verify his understanding and whether the facts were true.

[58] The defendant argued that the plaintiff's reputation had been inflated by himself and blamed the plaintiff for having aggravated the situation with his responses to the defendant. *McGregor on Damages* 20th edn, Sweet & Maxwell by James Edelman was referred to which stated that the claimant's conduct may be relevant as to the issue of damages. The case of *Lim Guan Eng v. Ruslan Kassim & Another Appeal* [2021] 4 CLJ 155; [2021] 2 MLJ 514; [2021] 3 MLRA 207 was also referred to by the defendant, particularly paras. 180 to 183 where the Federal Court found that damages are compensatory not enrichment. It is to vindicate the plaintiff by placing him in the position he was and would have been but for the defendant's defamatory statements. The Federal Court had opined that general damages should not exceed what was usually accorded in personal injury claims to a fully disabled claimant. Attached to the defendant's submissions are the precedent of orders for damages awarded in defamation cases that ranged from RM50,000 to RM600,000, some per defamatory statements, some global award.

[59] This has been a case of considerable public importance, involving as it does two prominent political figures and touching on sensitive issues of race and religion in our multicultural society. The evidence has demonstrated clearly that the allegations made by the defendant were not only false but potentially harmful to our nation's social fabric. Having found for the plaintiff on liability, this court now turns to the assessment of damages. Our law under s. 3 of the Act provides that in an action for slander or libel, a court may give general damages as it deems just. As the Federal Court incorporated in its judgment in *Lim Guan Eng v. Ruslan Kassim & Another Appeal* (*supra*) at para. 182:

> It is, of course, lamentable that by the time the court has pronounced judgment, vindication has come late for the successful plaintiff and, in the meantime, much damage has been done.

[60] The authorities are clear, libel is a tort actionable *per se* and that there is no requirement to prove actual harm. As succinctly put by our Court of Appeal in *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* [1995] 2 CLJ 912; [1995] 2 MLJ 493; [1995] 1 MLRA 322 at p. 926 (CLJ); p. 516 (MLJ):

> In other words, damage is not an ingredient of the tort. The law presumes that when a man's reputation is assailed, some damage must result. Evidence about the extent of that damage is admissible. But evidence that purely speculates is not. That, in a gist, is the effect of the passage cited.

[61] The Court of Appeal had summarised the principles governing the assessment of damages, though it was instructive that each judge was to be decided on its own particular set and circumstances. At p. 933 (CLJ); p. 524 (MLJ), various factors may be taken into consideration in assessing damages, including:

(i) the position and standing of the plaintiff;

(ii) the gravity and seriousness of the libel, *ie*, the three defamatory statements;

(iii) the mode and extent of publication;

(iv) the mental distress, hurt and anxiety caused to the plaintiff;

(v) the conduct of the defendant from publication to verdict;

(vi) the absence of apology or retraction by the defendant.

[62] These are the facts for this court's consideration to award the reliefs sought by the plaintiff:

(i) the plaintiff held high public office as Finance Minister and was previously Chief Minister of Penang. His reputation and integrity are crucial to his role as a public servant and politician. As noted in *Lim Guan Eng v. New Straits Times Press (M) Bhd* [2017] 4 CLJ 369; [2017] 9 MLJ 622, damage to the reputation of someone in such position can be particularly severe.

(ii) the allegations were extremely serious, imputing abuse of ministerial power by the plaintiff and improper racial/religious bias, in this case against the Islamic charitable organisation of Yayasan Al-Bukhary. The three statements suggested there was misconduct in public office.

(iii) the publications were extensive *via* Facebook and media. They received widespread circulation as the defendant's Facebook has substantial following. The publications were picked up and

re-published by major media outlets including The Edge Markets, Sinar Harian, Malaysiakini, and Berita Harian. The third statement was made in a recorded interview that was widely circulated.

(iv) the three defamatory statements caused significant damage to the plaintiff's reputation particularly among the Malay-Muslim community.

(v) the defendant's conduct amounted to aggravating factors as he made no attempt to verify allegations before the publications, he had continued with the publication of the second statement despite the plaintiff's denials. He has neither apologised nor retracted despite the plaintiff's protest and clear evidence that his allegations were false. The defendant was also persistent in defending the allegations despite clear evidence they were false.

(vi) the gravity of the transgressions is compounded by the defendant's position as a former Prime Minister that lent credibility to the allegations in the three defamatory statements against the plaintiff. There was the mixing of allegations with sensitive religious and racial elements. The baselessness of the allegations is proven by his own witness (DW2).

(vii) as for the remedies sought by the plaintiff, it would be remiss of this court to not take into account the position of the defendant, who was the Prime Minister from February 2020 to August 2021. The three defamatory statements that he made against the plaintiff, to a reasonable reader, would have been taken as the truth. The plaintiff is also a senior politician who, at one point in time, was helming our Ministry of Finance during the significant time when there was changing of the guards on the political front.

[63] Premised on the facts and circumstances of this case, this court finds this is an appropriate case to grant general, aggravated, and exemplary damages. General damages are awarded to compensate the plaintiff for damage to his reputation and vindicate his good name. Given the serious nature of the allegations and the plaintiff's high public standing, substantial damages are warranted.

[64] Aggravated damages may be awarded because the defendant's conduct has aggravated the injury to the plaintiff. As held in *Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Nurul Izzah Anwar & Anor* [2021] 4 CLJ 327; [2021] 2 MLJ 577; [2021] 2 MLRA 626, the defendant's conduct warrants aggravated damages due to:

(i) the calculated timing of the statements following his MACC questioning;

(ii) the inflammatory mixing of allegations with racial and religious elements;

(iii) the persistence in defending the statements despite clear evidence of their falsity.

[65] Exemplary damages are awarded to punish and deter. As noted in *Gatley on Libel and Slander* (11th edn), they should be the minimum necessary to mark the court's disapproval and deter others. The defendant profited (though not monetarily) from these publications by deflecting attention from his own legal troubles to the plaintiff. This merits exemplary damages to show that defamation does not pay.

[66] In addition to all the factors iterated above, this court also considered recent awards in comparable cases. The quantum of damages this court awards reflects both the gravity of the defamation and its potential impact on our society. It serves not only to compensate the plaintiff but also to vindicate his reputation and to mark the court's disapproval of the conduct displayed.

[67] Freedom of expression, while fundamental to our democracy, must be exercised responsibly, particularly by those who hold or have held high public office. The making of unsubstantiated allegations that play on racial and religious sensitivities cannot be countenanced by this court.

[68] To ensure the quantum this court awards does not depart from the precedents, this court noted the following outcomes:

1.	*Lim Guan Eng v. Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514; [2021] 3 MLRA 207; [2021] 4 CLJ 155	Federal Court restored the High Court's orders of compensatory and aggravated damages of RM150,000
2.	*MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun* [1995] 2 MLJ 493; [1995] 1 MLRA 322	Court of Appeal awarded a range of RM250,000 to RM3 million between different Defendants.
3.	*Chin Choon @ Chin Tee Fut v. Chua Jui Meng* [2005] 3 MLJ 494; [2004] 2 MLRA 636; [2005] 2 CLJ 569; [2005] 3 AMR 189	Court of Appeal awarded RM200,000 for damages
4.	*Dr Zakir Abdul Karim Naik v. Ramasamy a/o Palaniasamy* [2024] 9 MLJ 881	High Court ordered for the Plaintiff of RM200,000 for general damages for each of the 5 defamatory publication (RM200,000 x 5 = RM1,000,000), RM20,000 for compensatory damages for each of the 5

		defamatory publication (RM20,000 x 5 = RM100,000), RM20,000 for aggravated damages for each of the 5 defamatory publication (RM20,000 x 5 = RM100,000), RM20,000 for exemplary damages for each of the 5 defamatory publication (RM20,000 x 5 = RM100,000),
5.	*Nurul Izzah v. Tan Sri Khalid Abu Bakar* [2018] 7 CLJ 622	High Court ordered First Defendant to pay damages RM400,000 to the Plaintiff and Second Defendant to pay damages RM600,000 to the Plaintiff.

[69] This court's orders are therefore as follows:

(i) general damages of RM1,050,000 (RM350,000 for each defamatory statement);

(ii) aggravated damages of RM150,000;

(iii) exemplary damages of RM150,000;

(iv) a retraction of all three defamatory statements by the defendant from his social media accounts immediately;

(v) an injunction restraining the defendant whether by himself, his employees, servants, agents, or otherwise from issuing or publishing or re-issuing or re-publishing the three defamatory statements or any similar words defamatory to the plaintiff.

[70] A penal notice under O. 45 (in Form 43) of the Rules of Court 2012 be endorsed on this judgment.

[71] There were many resources in terms of precious time and costs employed for this trial that includes the attendance of both the plaintiff and the defendant in this court to adduce evidence *vide* their oral testimonies. Accordingly, costs of RM50,000 is awarded to the plaintiff subject to allocatur to be paid forthwith.